

CITY OF TIGARD, OREGON

ORDINANCE NO. 02-22

AN ORDINANCE AMENDING CHAPTER 15.04, STREET AND ALLEY EXCAVATIONS, OF THE TIGARD MUNICIPAL CODE.

WHEREAS, the City Council finds that Chapter 15.04 of the Tigard Municipal Code should be updated;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Chapter 15.04 is amended to read as follows:

Deleted language is shown by a ~~strike through~~ of language; added language shown by an underline of language.

Chapter 15.04 ~~STREET AND ALLEY EXCAVATIONS~~ WORK IN RIGHT-OF-WAY

Sections:

- 15.04.010 Definitions.
- 15.04.020 Permit--Required.
- 15.04.030 Permit--Application.
- 15.04.040 Permit--Conditions.
- 15.04.050 Security.
- 15.04.060 Conduct of work.
- 15.04.070 Adherence to and exhibition of permits.
- 15.04.080 Driveway approaches and curb cuts.
- 15.04.090 Areas of limited street improvements.
- 15.04.100 Abandoned driveway approaches.
- 15.04.110 Sufficient parking required.
- 15.04.120 Unusual conditions.
- 15.04.130 Jurisdiction.
- 15.04.140 Inspection and acceptance.
- 15.04.150 Barricades and safety measures.
- 15.04.160 Liability for accidents.
- 15.04.170 Repairs.
- 15.04.180 Option to city to replace pavement.
- 15.04.190 Applicability to city work.
- 15.04.200 Violation--Penalty.

15.04.010 Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

- (1) "Apron" means that portion of the driveway approach extending from the gutter flow line to the

property line.

(2) "Curb return" means the curved-portions of a curb in the end slopes of a driveway approach.

(3) "Driveway" means an area designated for vehicular use, other than a designated parking area, not dedicated or set aside for public use.

(4) "Driveway approach" means an area, construction or improvement between the roadway of a public street and private property intended to provide access for vehicles from the roadway of a public street to a definite area of the private property, such as a parking area, a driveway, or a door at least seven feet wide, intended and used for the ingress and egress of vehicles. The component parts of the driveway approach are termed the apron, the end slopes or the curb return.

(5) "End slopes" means those portions of the driveway approach which provide a transition from the normal curb and sidewalk sloping surface or by means of a curb return together with the area between the projected tangents of the curb return.

(6) "Person" means every natural person, firm, co-partnership, association, public or private corporation, or district.

(7) "Sidewalk" means an area specifically delineated and constructed for pedestrian use located behind a curb but within public right-of-way.

(8) "Street" or "alley" means every way or place open as a matter of right to the use of the public for vehicular or pedestrian traffic between right-of-way lines.

(9) "Tunnel" means an excavation requiring the removal of dirt or like material and does not include driving or forcing of pipe through the ground. (Ord. 74-14 §1, 1974).

15.04.020 Permit--Required.

(1) (a) It is unlawful for any person to cut upon or within, break, dig up, damage in any manner, undermine or tunnel under any public street or public alley for the purposes of doing work in a public right of way or in a sanitary sewer, storm sewer or water easement as described in this chapter, without first complying with the provisions of this chapter in regard to the obtaining of permits, depositing of securities and the making of applications to the city. Applications for permits shall be in the form prescribed by the city. Permits shall be issued on an annual basis or for a limited time and shall specify the extent of the authority granted by the permit. Permits shall be issued on an annual basis only if the proposed work is subject to franchise agreement with the City.

(2) (b) Any person who cuts upon or within, breaks, digs up, damages in any manner, undermines or tunnels under any unimproved public street or public alley for purposes other than those described in this chapter, must obtain an encroachment permit pursuant to Chapter 15.16 of this Code. (Ord. 99-31, Ord. 74-14 §2, 1974).

15.04.030 Permit--Application.

(a) At the time of application for permit for a limited time and for a specific cut or break in a street or alley, the applicant shall specify his name, telephone number, and address, the date of application, the name of the street or alley to be cut or tunneled under; the nature of the street surface or of pavement involved; the purpose of the work; the size, location and nature of the cut or excavation; the number of days required to complete the work; and shall execute an agreement to deposit such securities as required by the city, to comply with the provisions of this chapter and with the specifications of the city pertaining to the conduct of the work, to save the city and its

employees harmless against any injury or damage which may result from the actions of the applicant, and to notify the City Engineer's office at least twenty-four hours before beginning the work. file a report of the work done within forty eight hours of its completion. Application for each permit to be issued for a limited time and for a specific cut or break in the street or alley shall be accompanied by a fee set by the city council according to Chapter 3.32 of this code.

(h) The application for an annual permit shall be in form as prescribed by the city and shall specify the name and address of the applicant, as required by the city, to comply with the provisions of this chapter, and an agreement to save the city and its employees harmless against any injury or damage as a result of the actions of the applicant and to file a report of all work done under the permit within ten days after the initial cut or break in the street or alley has been made. Application for an annual permit shall be accompanied by a fee set by the city council according to Chapter 3.32 of this code. (Ord. 84-54 §1, 1984: Ord. 81-93 §1, 1981: Ord. 74-14 §3, 1974).

15.04.040 Permit--Conditions.

All work in streets or other public places shall be done in the location approved by the ~~department of public works~~ Engineering Department and in accordance with plans and specifications prepared or approved by the department. Such permit may include conditions binding upon the permittee. Such conditions may include prior filing of a performance bond and/or a maintenance bond and may include such other requirements as the ~~department of public works~~ Engineering Department finds appropriate in the public interest. All work done shall be subject to the rejection or correction requirements of the ~~department of public works~~ Engineering Department and subject to its final approval. (Ord. 74-14 §4, 1974).

15.04.050 Security.

Before the issuance of any permit, the ~~department of public works~~ Engineering Department shall require the applicant or his contractor to file with the city, as security, either:

(1) In the event an annual permit is requested, a surety bond in the amount of five thousand dollars, unless the applicant is already bound by the provisions of a franchise ~~ordinance or a subdivision compliance~~ agreement.

(2) In the event of an application for a permit for one particular cut or break in an alley or street, a surety bond in an amount equal to the estimated cost of the work to be performed.

(3) The cost upon which the amount of the bond or security shall be based shall be the cost of the work to be performed within the public right-of-way, and not the cost of work to be performed outside of such right-of-way.

(4) Security may be held on deposit by the city for a period of one year. The security agreement shall provide that the applicant or his contractor will, immediately upon completion of the work, be obligated to keep the work in a state of good repair at his own expense, and that he shall continue to do so until released from the maintenance obligation. In the event the applicant or his contractor fails to carry out all provisions of the permit and the maintenance requirement, and the city has unreimbursed costs or expenses resulting from such failure, the city may call upon the security agreement or deposit for reimbursement.

(5) In lieu of a surety bond, the applicant or his contractor may file as security cash, certified check or money order. The city shall hold such security subject to the conditions set forth above.

(6) In the case of unimproved streets, no security shall be required unless, in the opinion of the city, such security is necessary for the protection of the public interest.

(7) The requirements of this section may be waived if the applicant is a municipal corporation and it provides the city with written assurances including, but not limited to, the following:

(A) The applicant agrees to maintain in full force and effect all performance and security bonds assuring performance of contractors for the benefit of the applicant while the work is being performed under the permit for which application is made;

(B) In the event any or all of the work is not completed in accordance with the terms of the permit, the applicant will undertake to complete all work and obligations to be performed for the benefit of the city.

(8) The ~~public works director~~ City Engineer shall determine the adequacy of, and consent in writing to, the alternative assurances provided for in subsection (7) of this section prior to issuance of the permit. (Ord. 82-28 §1, 1982; Ord. 76-11 §1, 1976; Ord. 74-14 §5, 1974).

15.04.060 Conduct of work.

All work under such permits shall be done in conformity with the provisions of this chapter, the terms of the application and permits and in the manner approved by the ~~department of public works~~ Engineering Department. Upon completion of the excavation, cut or tunnel, all surplus earth, rubbish or other materials shall be removed immediately and the street surface or pavement shall be replaced in as good as or in better condition than it was before. (Ord. 74-14 §6, 1974).

15.04.070 Adherence to and exhibition of permits.

No work shall be undertaken other than that specified in the application and permit for a particular cut or excavation. Upon demand of a city representative or any police officer, the permit shall be produced at the place where the work is in progress or, in the case of an annual permit, shall be on display at the place of business of the person within the city; or such work shall be stopped until the permit is produced and/or authenticated. (Ord. 74-14 §7, 1974).

15.04.080 Driveway approaches and curb cuts.

(a) The permit provided in this chapter authorizes relocation of any municipal facility, including any within the limits of a curb return which may be encroached upon or allowed, providing that the applicant first notifies the appropriate authority, obtains the appropriate authorization and bears the cost of the relocation of the municipal facility.

(b) ~~No driveway approach shall be less than five six feet from the side property line projected except in cul-de-sacs, without approval and written permission of the city. The end slopes may encroach within the five foot restricted area.~~ Except for shared driveways, no driveway approach or access shall be less than six feet from the side property line projected, except in cul-de-sacs, without written permission of the City Engineer. End slopes shall not be considered part of the driveway approach or access.

(c) No portion of any driveway approach, including the end slopes, shall be located closer than thirty feet to an intersecting street right-of-way line.

(d) Commercial or service drives shall not be more than ~~thirty~~ forty feet in width and if located on the same lot frontage shall be separated by a minimum length of curb of thirty feet.

(e) Each residential driveway shall be not more than ~~twenty-six~~ thirty feet in width including end slopes, and if more than one driveway is to be constructed to serve the same lot, the frontage spacing between

such driveways shall be not less than thirty feet measured along the curb line.

(f) Joint access driveways shall conform to the appropriate width standard for commercial or residential type usage. (Ord. 74-14 §8, 1974).

15.04.090 Areas of limited street improvements.

(a) Where standard gutter and curbs have been installed but where concrete sidewalks have not been installed, the applicant shall be required to construct the driveway approach from curb line to the applicant's premises. The cost shall be borne by the applicant.

(b) Where standard gutter and curbs have not been installed, the driveway approach may be constructed of the same material used for surfacing the driveway. The applicant shall improve that portion between the property line and existing pavement in such a manner as to not impede surface drainage along the street. The cost of that portion of the improvement, between the property line and existing pavement, shall be borne by the applicant. (Ord. 74-14 §9, 1974).

15.04.100 Abandoned driveway approaches.

In the event a person, firm or corporation makes an application to relocate a driveway approach and abandons an existing driveway approach, the applicant shall remove the existing driveway and replace the curb to a standard curb section at his own expense. (Ord. 74-14 §10, 1974).

15.04.110 Sufficient parking required.

~~No permit for the construction of driveway approaches to public or private property shall be issued unless sufficient parking area is provided on the property served, entirely within the property lines in accordance with city ordinances. No permit for the construction of new driveway approaches shall be issued unless the property served has the minimum parking required by the Community Development Code.~~ (Ord. 74-14 §11, 1974).

15.04.120 Unusual conditions.

~~The city council may grant variances from the regulations and requirements of this chapter, provided it is first determined at a public hearing that the following conditions are all present:~~

~~(1) The variance requested arises from peculiar physical conditions not ordinarily existing in similar districts in the city or is due to the nature of the business or operation upon the applicant's property; and~~

~~(2) That the variance requested is not adverse to the public interest, particularly safety, health and general welfare; and~~

~~(3) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or tenants; and~~

~~(4) That application of the strict terms of this chapter will work unnecessary hardship upon the applicant, property owner or tenant.~~

The City Engineer may grant the permit even if all the standards of this chapter are not met if the City Engineer determines that the following conditions are present:

- (1) There are peculiar physical conditions not ordinarily existing in similar districts in the City or the nature of the business or operation makes compliance with all standards impossible or impractical;
- (2) The public interest, particularly safety, health and general welfare is not adversely affected;
- (3) The granting of the permit will not adversely affect the rights of adjacent property owners or residents; and
- (4) The application of the standards of this chapter would woor unnecessary hardship upon the applicant, property owner, tenants or residents. (Ord. 74-14 §12, 1974).

15.04.130 Jurisdiction.

The requirements of this chapter shall apply to all public rights-of-way under the jurisdiction of the city of Tigard, dedicated by plat or deed, created by user, or the use thereof controlled by the city pursuant to agreements with Washington County or the ~~State Highway Department~~ Oregon Department of Transportation. (Ord. 74-14 §13, 1974).

15.04.140 Inspection and acceptance.

The permittee must apply to the ~~department of public works~~ Engineering Department of the city for inspection of the work to determine compliance with the requirements of this chapter, prior to final acceptance of the work. The permittee shall not be relieved of obligations under any performance or cash bond posted pursuant to the provisions hereof until the work is in accordance with the terms of the permit and has been accepted by the department. The permittee shall further remain obligated through a time period which may be required by the city, via a maintenance bond, but not exceeding one year from the date of acceptance of the work. (Ord. 74-14 §14, 1974).

15.04.150 Barricades and safety measures.

Whenever any person, under authority of this chapter or otherwise, places any obstruction in a street or alley or makes any excavation therein for any purpose whatsoever, it shall be the duty of such person or corporation to keep the obstructions or excavation properly safeguarded by substantial barricades and display lighted red lanterns or other lights or flares from dusk until daylight in conformity with such regulations as may be specified by the ~~eCity eEngineer~~. Whenever, in the opinion of the ~~city department of public works~~ Engineering Department, the public safety is endangered by such cuts or excavations as to require constant supervision from dusk to daylight to insure that all barricades are in proper condition and location, all warning lights are burning and all traffic is properly routed around such barricades, the person to whom the permit for work has been granted shall be responsible for furnishing a night watchman for that purpose. (Ord. 74-14 §15, 1974).

15.04.160 Liability for accidents.

Every person or corporation having occasion to place any obstruction in any street or alley or to make any excavation therein under provision of this chapter shall be responsible to anyone for any injury by reason of the presence of such obstructions or excavation on the public highways when the obstruction or excavation is the whole proximate cause of the injury and shall also be liable to the city, in the event that the city is held responsible for any action or claims or otherwise arising out of the presence of the obstruction or excavation on the public highway. (Ord. 74-14 §16, 1974).

15.04.170 Repairs.

All persons to whom ~~such~~ permits are granted under this chapter shall be personally responsible for the maintenance and repair of the street surface of pavement cut, dug up, damaged, tunneled under, undermined, under the provisions of the permit, in as good or better condition then before such work was undertaken, at their own expense, and for such a period of time as required by the ~~city department of public works~~ Engineering Department, but not to exceed one year. (Ord. 74-14 §17, 1974).

15.04.180 Option to city to replace pavement.

Whenever, in the opinion of the ~~e~~City ~~e~~Engineer, it would be to the best interest of the city for the city itself to replace or repair the street surface or pavement cut, damaged, tunneled under or undermined under the provisions of this chapter, such work shall be done by the city and the cost of the work shall be either charged to the person to whom the permit for the cut or excavation has been granted or deducted from security deposited by him with the city. (Ord. 74-14 §18, 1974).

15.04.190 Applicability to city work.

The provisions of this chapter shall not be deemed to apply to construction or maintenance within streets or alley rights-of-way by the city, by its employees, when conducting city work, or by persons operating under contract with the city; contractor's performance and maintenance responsibilities are not, though, relieved. (Ord. 74-14 §19, 1974).

15.04.200 Violation--Penalty.

~~Any person, firm or corporation who is convicted of a violation of the provisions of this chapter is guilty of a misdemeanor and shall be subject to the imposition of a fine not to exceed two hundred fifty dollars. A violation of this chapter is a Class 1 Civil Infraction.~~ (Ord. 74-14 §21, 1974).■

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By unanimous vote of all Council members present after being read by number and title only, this 28th day of May, 2002.

Catherine Wheatley
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2002.

James E. Griffith
James E. Griffith, Mayor

Approved as to form:

Janet V. Kerner
City Attorney

5/28/02
Date

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